

Asia Pacific Media Educator

| Issue 12

Article 4

12-2002

Hong Kong's news media five years after the handover: Prospects for press freedom

J. Clarke
Hong Kong Baptist University

Follow this and additional works at: <https://ro.uow.edu.au/apme>

Recommended Citation

Clarke, J., Hong Kong's news media five years after the handover: Prospects for press freedom, *Asia Pacific Media Educator*, 12, 2002, 44-61.

Available at: <https://ro.uow.edu.au/apme/vol1/iss12/4>

Research Online is the open access institutional repository for the University of Wollongong. For further information contact the UOW Library: research-pubs@uow.edu.au

Hong Kong's News Media Five Years After The Handover: Prospects For Press Freedom

This paper examines the current situation of Hong Kong's news media in the context of the development of Hong Kong's government and its relations with Beijing. Despite expectations that press freedom would be eroded under Chinese rule the news media remain very free and outspoken, especially in criticising the local administration. However, much of the ownership of the news media is already in pro-Beijing hands, and, with democracy declining and the role of the legislature and the opposition being eroded, concerns arise that restrictive laws already in existence as well as those due to be made may be used later to reduce the freedom of the press.

Judith Clarke
Hong Kong Baptist University

Fears that Hong Kong's liberal press system would be compromised under Chinese rule have proved unfounded: newspapers and magazines, as well as certain television and radio current affairs programmes, continue to be outspoken and often highly critical of the local government. However, the grounds for concern about loss of this freedom remain, and in some ways are more worrying five years after the handover than before as the Hong Kong government deals with the strain of maintaining a balance between local forces and Beijing while facing economic decline since the Asian financial crisis of the late 1990s. This paper examines the changes in Hong Kong that have affected the news media in the five years since the handover to discern the conditions that underpin the current freedoms and affect future development.

Background

Before the handover to China in 1997 Hong Kong's news media covered a spectrum from mainland communist to Taiwan nationalist – ultra-leftist, leftist, centrist and rightist (Lee & Chan, 1990) – but the extremes had few customers and the mainstream local news was apolitical, apathetic and skilfully managed by the

colonial government (Lee & Chu, 1995). From the mid-1980s, spurred by the 1984 signing of the Joint Declaration arranging the colony's handover from Britain to China, the news media became more active and opinionated, turning into what Paul Lee and Leonard Chu call a Type II system, that is, relatively free (Lee & Chu, 1995).

In the 1990s up to 1997, when the last British governor, Chris Patten, instituted much broader elections to the Legislative Council (Legco), government-media relations developed into what Lee and Chu call a "reformist" model, identified by three characteristics: the media serve as a watchdog of government but are not hostile to it, the government makes no effort at suppression, and people support the media (Chu & Lee, 1995). A defining point of the new atmosphere was the appearance in 1995 of *Apple Daily*, whose founder, Jimmy Lai Chi-ying, was a strong critic of Beijing. The new paper broadened debate and boosted the sector by provoking a price war, pushing the mass circulation market into increasingly sensational coverage of crimes, scandals, accidents, suicides and the like. Television kept its staid news bulletins but instituted 'infotainment' programmes about sensational matters.

Despite the revitalisation of the news arena and the guarantee of press freedom in Article 27 of the Basic Law, Hong Kong's constitution, many were concerned before 1997 that Chinese government influence would restrict the press. Lee and Chu predicted that the Hong Kong media would move to Type III, that is, relatively repressive (Lee & Chu, 1995) and would after 1997 "legitimate the new master without feeling great discomfort", a trend that had started well before the handover (Lee & Chu, 1998). A colleague and I have pointed out that there are still some little-used repressive laws from the colonial administration despite attempts to update them with regard to human rights. These include the Emergency Regulations Ordinance, which allows for censorship under emergency conditions, and the Police Force Ordinance, under which police can obtain warrants to search the premises of news organisations, as well as the Public Order Ordinance (POO), whose controls on public meetings and rallies have been tightened up by the new administration (see below) (Clarke & Hamlett, 1995; Hamlett & Clarke, 1997).

Some commentators emphasised the grounds for optimism. Lo Shiu-hing argued that Beijing had an instrumental view of Hong Kong as a means to attract Taiwan back into the fold, and therefore would be likely not to stray from the Basic Law (Lo, 1998), while Frank Ching suggested that the Chinese government would respect Hong Kong's freedoms because the territory was an important showcase in its desire to achieve Western standards (Ching, 1999). Moreover, as Scollon (1997) noted, what was distinctive about local newspapers was "the variety of styles, points of view, and, indeed,

of separate publications and publishing companies", so that, unlike news media in the West, they had not been subsumed into huge corporations and "represent one of the world's most diversified theatres of public discourse." This has meant that the Internet, widely accessible in homes in the territory, has become more a tool for reading the local press than an outlet for criticism of the government.

Thus the news media system has remained 'Type II'. Although the range of opinion narrowed with the collapse of the Taiwan-sponsored press just before the handover and the movement of a number of news organisations to a pro-mainland stance, the news media still cover a broad area. The mainland-run press continues and is important in articulating Beijing's views, though its audience is still small, and, while the mass-circulation newspapers remain generally 'populist-centrist' without strong political opinions, local issues are hotly discussed and newspapers take different stands (Lee & Chu, 1998; Pan, 2002). *Reporters Sans Frontières*, the French non-governmental organisation that tracks press freedom around the world, recently placed Hong Kong at number 18 out of 139 countries and territories examined, the highest score in Asia (though Taiwan was not included) and one rank below the United States (US) and three ranks above Britain. Complaints about commercialisation and sensationalism abound, but these phenomena can themselves be seen as one result of a high level of press freedom in a free market economy.

Over the five years since the handover, however, Hong Kong itself has changed. Some democratic reforms initiated by Chris Patten, such as the POO, have been rolled back, and opposition voices increasingly sidelined. The local economy, facing recession, has become more and more integrated with and dependent on the mainland's. The news media may appear to be beyond government control but in fact are already largely in the hands of pro-government and pro-China interests. This paper argues that there is strong potential for danger to the freedoms enjoyed by the news media in Hong Kong.

Changes In Government Since The Handover

The Basic Law prescribed an executive-led government and provided regulations for the election of the Chief Executive (CE) and the Legislative Council, but since the handover the leeway in interpretation has been exercised to increase the power of the executive at the expense of the legislative level.

After Patten's reforms produced a Legco that "was regarded as the most democratically elected legislature in Hong Kong's history" in 1995 (Chen, 2001), an appointed provisional Legco took over for a year from the 1 July 1997 handover, and for the 1998

and 2000 elections changes were made to electoral rules that favoured the pro-government and pro-Beijing groups rather than the pro-democracy parties that had become so popular under Patten (Newman & Rabushka, 1998; Chen, 2001). The latter groups now command fewer than 20 of the 60 seats, so that government legislation goes through easily. This has given rise to criticisms of the hasty passage of bills that have wide implications for all kinds of freedom. One was the United Nations (UN) (Anti-Terrorism Measures) Bill 2002, drafted in response to the UN's call for such legislation after the United States plane bombings of 11 September 2001. The legislation was passed in July 2002 amid complaints from pro-democracy Legco members that some provisions could trap innocent people (Leung & Li, 2002) and from the Hong Kong Bar Association that there were already laws that dealt with terrorism and that the bill had been hurried through when there was no urgency (Hong Kong Bar Association, 2002). There were criticisms of too much haste also in the passing of a bill setting up the "ministerial" system in June 2002 (see below) (Cheung et al., 2002) and another to cut civil servants' pay in July (Yeung, 2002). The composition of Legco and the methods of election can be changed after 2007, according to the Basic Law, but any new procedures will require a two-thirds majority in the body itself and the consent of the CE (Annex II: II III), so that in current circumstances any move towards democratisation is hardly likely to succeed.

In 2002 Tung Chee-hwa, selected as CE before the handover, came up for re-election to a second five-year term. Well before the due date he had gathered 700 supporters among the 800-strong selection committee, making it clear that no one could stand against him, despite independent polls showing his popularity to be declining. He was allowed HK\$9.5 million for election expenses even though he proved to be the sole candidate. His first act in his new term in July was to revamp the executive level of government with what was termed an "accountability" system. The existing formulation, inherited from the colonial era, had an Executive Council appointed by the CE to advise him, while civil servants were appointed as secretaries of the government departments. This structure was replaced by a single layer of highly-paid "ministers" appointed by the CE and who could resign or be sacked (though in what circumstances was not made clear).

Answering criticisms of the system, officials have pointed to ministerial systems in other countries without noting the role there of democratic election and legislative scrutiny. Some continuing appointees, such as Secretary for Justice Elsie Leung Oi-sie, had been unpopular in the earlier administration. The system was tested soon after it began when in July the Hong Kong Stock Exchange issued a consultation paper suggesting the de-listing of "penny

stocks", causing a massive market dive the next day.

An inquiry panel found that government officials and market regulators were not to blame, but there was so much public antipathy that eventually the new Secretary for Financial Services, Frederick Ma Si-hang, made a public apology and his ultimate boss, Financial Secretary Antony Leung Kam-chung, admitted that he himself "could have done better" (J. Cheung, 2002). Then in October the new Secretary for Education, Prof Arthur Li Kwok-cheung, announced that two universities, one of which he had headed in his previous job, would merge, when neither had been fully consulted on the matter. Many academics and others in fact deplored the plan. The "ministers" involved in these controversies remain in place.

The new methods of election and selection at the legislative and executive levels have served to entrench supporters of Tung as well as to nurture relations between Hong Kong's ruling élite and the Chinese government. Fu Hualing (2001: 77) finds that Beijing has substantial influence over the CE, other officials and law makers, as well as local business, and says, "The unholy alliance between Beijing's top Communists and Hong Kong's richest capitalists provides the most effective channel for Beijing to influence Hong Kong's political and legal development." In a way this situation provides a safeguard for stability because it ensures that anti-Beijing activity, while not stifled, can do no more than provide informational input to policy decisions, yet on the other hand the lack of effective outlets for dissenting views may force opposition groups to seek non-formal and less orderly means of expression.

While it must be acknowledged that the Hong Kong Special Administrative Region (SAR) government has had a difficult task in implementing one-country-two-systems in a time of recession, the administration has not distinguished itself in dealing with crises. Its reactions have been characterised by ad hoc measures, occasional backtracking on policy announcements, and overtly favouring the business sector, which also supports Beijing. Some of these cases will be briefly examined.

- **Right of abode:** Some mainlanders sought right of abode under Article 24 of the Basic Law based on the residency of their parents, though these parents had not been Hong Kong residents at the time of the claimants' birth. When the applications were rejected, the claimants took their case to the courts and won in the Court of Final Appeal (CFA) in 1999. The government then obtained an 'interpretation' of Article 24 from the Standing Committee of the National People's Congress that overturned the

Controversial Acts Of The Government

CFA decision. The ruling prompted demonstrations and widespread concern because the Basic Law recognised the CFA as having “the power of final adjudication” in Hong Kong (Article 82). The right-of-abode claimants have continued to press their case through the courts as well as demonstrations, but most have been returned to the mainland, some after raids on their homes.

- **Public order:** Under the Patten administration the POO was liberalised, replacing the requirement that public gatherings get police permits with simple notification, but amendments passed in 1997 added the need for a police certificate of no objection a week in advance if there were to be 50 or more at a meeting or more than 29 at a demonstration. In August 2000 sixteen students were arrested after a rally in support of the right-of-abode seekers; seven were charged under the POO, and five of them were also later charged under the POO for an earlier demonstration. The charges were dropped amid public sympathy for the students (HKJA, 2001; HKJA & Article 19, 2001). In November 2002 three political activists were found guilty under the POO of an unauthorised rally earlier in the year, though the magistrate questioned the bringing of the case to court in the first place because of its possible political nature. Yet demonstrations by government supporters were dealt with more leniently.

In mid-2002 rallies by New Territories villagers, whose Heung Yee Kuk organisation is a staunch government supporter, and by famous figures in the film industry, neither of which had permits, did not attract police action. In another case, a charge of flag desecration was upheld by the CFA in 1999 despite an earlier appeal ruling that the laws used to prosecute were incompatible with the Basic Law, and two further prosecutions followed in 2002. Falun Gong members and US activist Harry Wu, who has investigated prison conditions in China, have been denied entry to Hong Kong in what seems like a nod to Beijing's sensitivities.

- **Manipulation of popularity polls:** In July 2000 Robert Chung Ting-yiu of the University of Hong Kong (HKU) alleged in an article in the *South China Morning Post* that Tung Chee-hwa's special assistant had placed pressure on him via the university's vice-chancellor and pro-vice-chancellor to end public opinion polls on the CE's popularity. A televised inquiry, set up by HKU, found the charge basically substantiated, calling the CE's aide a “poor and untruthful witness”. The two university officials resigned, but the CE's special assistant remained in place (HKJA, 2001: 4; HKJA & Article 19, 2001: 16).

- **Favouritism:** There have been several instances where the administration has appeared to act to help its supporters. In 1998 three employees of the *Hong Kong Standard* were found guilty of

The News Media

inflating circulation figures to advertisers, but the company's then owner, Sally Aw Sian, a supporter of the government and friend of Beijing since the early 1990s, was not prosecuted despite being named at first as one of the conspirators. In 1999, the government handed the last major vacant site on Hong Kong island without tender to PCCW, the local telephone company, which is headed by Richard Li Tzar-kai. Li is a son of Hong Kong's richest tycoon Li Ka-Shing, who is close to both the Hong Kong and Beijing regimes. PCCW remains the staple telecommunications company, despite moves to deregulate the market, and is the territory's main Internet and broadband service provider (though one of its main competitors is Hutchison, which is headed by the elder Li). The quiet reversal of the CE's initial policy to build 85,000 new flats a year and later measures to end government-built low-cost home ownership blocks and reduce the amount of land released for development have been seen as helping the big property companies weather the fall in house prices.

Ironically, the government's blunders are widely known because of the freedom of the news media. Indeed, there is little holding back on criticism of the CE and his administration. Yet the actions of the government mentioned above indicate that efforts are being made to establish controls for the future, and there are specific areas of the news where danger to press freedom lies.

Journalists and the law

Several cases were handled in ways that drew criticism. In 1997 the mass-market *Oriental Daily News* (ODN) sent its paparazzi to harass a judge who had ruled against its parent company in a copyright complaint against *Apple Daily* for stealing a picture of a local star. Wong Yeung-ng, former editor of ODN, was sentenced to four months' jail in mid-1998 for contempt on the grounds of scandalising the court, a charge rarely used in modern times. Anne Cheung criticises the use of this charge because it is vague and fails to separate press freedom from physical harassment (A. Cheung, 2002: 207-209), while Tim Hamlett calls the offence "a serious hazard for the media in Asia-Pacific countries with a Common Law background" because judges decide on cases in which they themselves are involved (Hamlett, 2001). In another case the Independent Commission Against Corruption (ICAC) raided *Apple Daily* in 2000 in search of evidence against a reporter said to have bribed the police for information (he was later found guilty of this charge), and *Apple Daily* brought a case against the ICAC on the grounds that the search warrant was not valid. The

initial effort failed and the case was taken to appeal but disallowed at CFA level (HKJA & Article 19, 2000: 11-12). Anne Cheung takes the judiciary to task for not being more forceful in establishing the primacy of the Basic Law's guarantee of press freedom, finding that judges instead concentrate on points of Common Law because "deference to authority is valued higher than the respect of civil liberties" (A. Cheung, 2002: 192).

A main worry has been the government's proposal to implement Article 23 of the Basic Law, which requires the Hong Kong SAR to enact laws on treason, secession, sedition, subversion against the Central People's Government and theft of state secrets, as well as to stop foreign political groups conducting political activities in Hong Kong or establishing ties with local political groups. No time frame was set and many had hoped that it would be delayed indefinitely, Cullen (2001) and Fu (2001) among others believing that there is no need for further legislation because the area is well covered already. The HKJA & Article 19 (2002: 2) requested the government not to take action at all or at least to guarantee that any legislation passed would come up to international human rights standards.

In February 2003 the draft legislation was published and passed to Legco. Reassuringly, it addressed many of the major complaints. However, concerns remained. The Hong Kong Journalists Association noted that although the offence of "unauthorised access" to official information had been limited to that gained by criminal means, it was still a threat to journalists, who may not know that information they receive has been obtained in such a way as, for example, in the case of a letter posted to a newspaper. Moreover, the publication of information gained through criminal means may in fact be in the public interest, and this is not allowed as a defence; nor even is prior publication. The HKJA called also for the dropping of the offence of dealing with seditious publications, even though this has been clarified in the final version of the law. Other complaints include the empowering of the Secretary for Security to ban groups on national security grounds, including cases of local organisations subordinate to groups banned on the mainland on such grounds (Bale, 2003).

For the news media the proposals have a number of concerns. One is over the proposal for legislation on sedition. This revives a moribund law, last used in 1952, and gives no special protection to reporting. Official secrets legislation is also taken further than what exists, criminalising unauthorised access to protected information – a threat to any journalist who receives such information anonymously – with such areas to include relations between Hong Kong and the Chinese government, a clearly newsworthy subject. Misprision of treason, currently a common law offence and not used

in Britain for two centuries, is to be made statutory, punishing anyone who knows of someone else who has committed treason and doesn't report it. Journalists may come across such information in the course of their work and feel obliged to keep it secret, as happened during the 1989 Tiananmen rally and subsequent escape of participants after the army attack. The publication of the proposed laws would reassure the many who are concerned and allow for careful consideration of wording before the legislative process.

Regulation of the industry

In June 2000 the Broadcasting Ordinance (BO) was passed to replace the former Television Ordinance, but it was not so all-encompassing as the omnibus bill mooted by the colonial government to bring all forms of broadcasting under one law. Yan Mei-ning expresses disappointment that the BO makes no provision for better quality programming and that the Broadcasting Authority set up to oversee the industry is not really independent of the government. She points out that the new law allows the CE more power to change regulations while reducing Legco's vetting power (Yan, 2001b: 13). An effort in an addition to the BO to diversify Hong Kong's television sector by offering five pay-tv licences seems to have flopped or at least stagnated, perhaps due to the recession, but it was riven with accusations of favouritism. One of the applicants was Galaxy, a subsidiary of the dominant terrestrial television broadcaster Television Broadcasts Ltd. (TVB), even though the rules forbade current licence holders to apply. After objections from Hong Kong Cable Television Ltd., the CE allowed Galaxy's application under his right to do so in the public interest, though with some restrictions. No explanation as to why the application was in the public interest was given. In the event three applicants dropped out and Galaxy was late in paying its bond (HKJA & Article 19, 2001: 21). As Yan points out, this indicates that, far from bringing about the diversity in television the government wished for, the market was likely to become even more concentrated in the same old hands (Yan, 2001b).

The BO makes no mention of the government's Radio Television Hong Kong (RTHK). The station's outspokenness has provoked criticism from pro-Beijing quarters. In mid-1999 RTHK's *Headliner* programme featured Taiwan's representative in Hong Kong, who stated the view of Taiwan's then-president Lee Teng-hui that relations with China should be approached on a "state-to-state" basis, a formulation akin to sacrilege in Chinese government circles. This drew strong criticism from Beijing, where it was thought that voicing such views was not appropriate in

Hong Kong. In October that year RTHK's director, Cheung Man-ye, a strong advocate of the station's independence, was posted to Tokyo, apparently her own choice, though some wondered if the move was connected to the incident (HKJA & Article 19, 2000: 6-7).

There was concern again in October 2000 when Tung Chee-hwa agreed with a pro-Beijing legislator who suggested that RTHK should be obliged to help explain government decisions. RTHK responded by stressing its editorial independence, though stating that it would explain policies and exchange views with the public over them in programmes (HKJA, 2001: 5).

The press has not escaped efforts to regulate it. In 1999 the Law Reform Commission's Sub-Committee on Privacy recommended that a statutory press council with the power to fine newspapers be created to regulate press intrusion according to a code on privacy. There was an outcry from the journalistic community (HKJA & Article 19, 2001: 27) and others (see, for example, Zeitlin, 1999). Eventually the Newspaper Society of Hong Kong, which represents publishers, set up the Hong Kong Press Council in 2000 to pre-empt a government-sponsored body. The new group comprised 15 members of the public and representatives from 11 newspapers, but *Apple Daily*, *ODN* and its sister tabloid *The Sun*, which are estimated to command 70-80 per cent of the market, did not join, nor did the respected *Hong Kong Economic Journal* and *Sing Pao* (HKJA, 2001: 5).

Media ownership

Perhaps the most ominous indication of the potential for loss of press freedom is the increasing acquisition of the news media by pro-mainland interests. Robert Kuok, a Malaysian tycoon with businesses in China, owns the English-language *South China Morning Post*, purchased in 1993, and 33 per cent of TVB. Sally Aw Sian, proprietor of the once pro-Taiwan *Sing Tao Jih Pao* and English-language *Hong Kong Standard*, turned pro-China in 1993 and even published two short-lived newspapers on the mainland. The dropping of charges against her in the circulation inflation case mentioned above came at a time when she was beset by financial difficulties, and she had sold her whole business by early 2001. Sing Tao Media Holdings is now owned by tobacco tycoon Charles Ho Tsu-kwok, whose Global China Group Holdings Limited is in the multimedia business in China. *Ming Pao*, once owned by the writer Louis Cha, who became very supportive of Beijing in the 1980s, was sold twice in the early 1990s. A large part is now in the hands of the Indonesian-Chinese businessman Oei Hong Leong, who has business interests in China and publishes the pro-mainland *Wide Angle* magazine, and the rest is with the Malaysian-Chinese publisher Tiong Hiew King, who also does business in China.

C.C. Lee notes that *Ming Pao* became less strident in its criticism of China after this change in ownership (Lee, 2000). Sing Pao Media Group, publisher of *Sing Pao Daily News*, was sold in late 2000 to China Strategic Holdings, a conglomerate owned by construction magnate Charles Chan Kwok-leung, who also holds 10 per cent of *Ming Pao* and 54 per cent of *Wide Angle Press* (HKJA, 2001: 7) and is reported to be close to Li Ka-shing (Quak, 2000).

Lai Sun Holdings, the company of businessman Lim Por Yen, sold 51 per cent of second television broadcaster ATV in 1998 to two China-connected companies. One was *Dragon Viceroy*, owned by Liu Changle, a former Chinese army officer who part-owns the Phoenix satellite television station, which broadcasts to the mainland (HKJA & Article 19, 1998: 35-36). The Executive Council approved Liu and American-Chinese businessman Bruno Wu as owners of ATV even though both appeared disqualified under Hong Kong residence rules, and Liu also on grounds of cross ownership. Liu was required to pledge that he would not be involved in the day-to-day running of the station, but Wu became the effective manager (HKJA & Article 19, 1998: 37). In November 2002, after a failed attempt to buy in by one of Li Ka-shing's companies, ATV's chief executive, Chan Wing-kee, who had already bought 19 per cent of ATV, announced that he would buy Lai Sun's 32 per cent holding (Hui & Kwok, 2002). Chan is a National People's Congress Deputy and, according to the HKJA & Article 19 (2002: 22), supporter of Tung Chee-hwa.

Thus the great majority of the Hong Kong news media is in the hands of overtly pro-Beijing proprietors or businessmen whose interests in the mainland make content critical of the Chinese governments undesirable. While it is not necessarily the case that owners influence the content of the news media, they are in a position at least to set the tone for coverage and may take an active role in day-to-day operations. C.C. Lee (2000) says of ATV, "It may not be totally justified to impute a direct cause-effect relationship between media ownership and media content, but, in this case, concerns about possible erosion of editorial independence run deep."

The resignation of Willy Wo-lap Lam, a critic of Beijing, from the *South China Morning Post* was seen by many as brought about by proprietor Robert Kuok after a report by Lam that criticised a business delegation to Beijing of which Kwok was a member (HKJA & Article 19, 2000: 10-12). Lee and Chu (1998) link ownership with the ideology and structure of the news media. Chan (1999) worried "that the Chinese authorities may try to exert control through their stakes in the local press." Ching (1999) expressed concern that media owners were more susceptible to pressures from China because Beijing can provide or withhold

advertising, not to mention rights to publish and broadcast in China itself. Robert Stone (1998) points out that in Hong Kong newspapers are in the hands of more than 20 distinct groups, so: "... ownership on its own is insufficient to prevent a particular story from appearing in at least some papers [...but...] [t]he logic of the marketplace... tells us that owners have sole control over the recruitment and firing of news staff which vests them with the power to assemble journalistic teams which automatically take the owner's interests into account."

The tone of strident criticism of the government is set by the few news organisations whose owners are overtly not pro-Beijing, most notably *Apple Daily* and *Hong Kong Economic Journal*, but the Tung administration's high-handed ways and inefficiency have become a major news story at a time when Hong Kong is feeling the pinch of recession, and has become accepted in all but the Beijing-run media. However, the Chinese authorities are rarely criticised. With new laws like the Article 23 proposals coming into effect it will be easier to persuade owners that their news outlets should be brought into line on the Hong Kong government as well.

The sensationalism that has characterised the mass circulation press since the appearance of *Apple Daily* in 1995 has been a constant source of public concern. Ying Chan (1999) said the journalistic community was more alarmed over the media's "ethical lapses" than interference from Beijing. Cullen (2001) criticises "media recklessness", and C.C. Lee complains that the mass market newspapers "invade privacy, fabricate stories, and throw out the window the dos and don'ts of journalists' ethics" (Lee, 2000: 311). The fear that the government might wish to legislate to curb what it sees as excessive coverage seemed for a time justified when the Law Reform Commission recommended a statutory press council (see above).

The reason behind the sensationalism is to some extent the very freedom the news media enjoy, though this competition means that in Hong Kong's market many do not survive. Casualties of recent years include the dailies *Wah Kiu Yat Pao*, *Tin Tin* and ODN's English-language *Eastern Express*, the political magazines *The Nineties* and *Pai Shing*, and the regional English-language magazines *Asia Magazine* and *Asiaweek*. Yet some new entrants to the market have thrived. In 1999 *Oriental* opened *The Sun*, aiming for younger readers, and Swedish company Metro International S.A. started up a free newspaper, *Metro*, in 2002, and both are going strong. However, the economic crisis has led to staff reductions in most, if not all, news media, especially after the dot.com failure, and journalists' salaries have dropped dramatically.

The News Media Themselves

Self-censorship and censorship

The HKJA & Article 19 noted just before the handover that, with pressures from China growing, “[i]t is self-censorship, rather than direct intervention, that will more likely undermine freedom of expression” (HKJA & Article 19, 1997: 4). The HKJA & Article 19 annual reports since then have warned that self-censorship remains a problem, though a changing one. As noted, coverage of China is the main area where journalists hold back. Before the handover Chinese officials warned that “advocating” freedom for Tibet and Taiwan would not be tolerated, and journalists take great care when reporting on these subjects and probably drop stories that might be seen to be crossing the line.

In April 2000, after the election of the Democratic Progressive Party's Chen Shui-bian as Taiwan's president, his vice-president, Annette Lu, stated that the island had independent sovereignty.

A Chinese official told a seminar organised by the pro-Beijing Hong Kong Federation of Journalists that the Hong Kong news media should not report such stories as normal news items, and should be responsible in upholding the integrity of China (HKJA & Article 19, 2000: 6). Even President Jiang Zemin himself castigated Hong Kong reporters, angrily accusing them at a televised meeting with the CE in Beijing of being “simple and naïve” after one had asked him whether the apparent selection of Tung for a second stint as CE was “an imperial order” (HKJA & Article 19, 2000: 9). However, the incident was seen as an embarrassing faux pas in Hong Kong, where it was widely shown and reported (though not in China).

Reporters from Jimmy Lai's Next Media publications *Apple Daily* and *Next* magazine are still not allowed to work on the mainland. Hong Kong journalists are supposed to apply for permits to report on the mainland, and, while the regulations are getting easier, many still go in without applying for permission. *Next Media* reporters have to do this though they face trouble if found out. Journalists still remember two pre-1997 cases where Hong Kong reporters were charged with stealing state secrets, one of them getting a jail sentence even though the supposed secret did not seem very important. According to the HKJA & Article 19, reporters remain within the bounds of what is published in the mainland because they “fear for their personal safety”. In Hong Kong, the report goes on, negative coverage of Li Ka-shing and his family is avoided and political news has been reduced in favour of “the tragic and the trivial” (HKJA & Article 19, 2002: 27).

In 1996 a survey of journalists done by the Chinese University of Hong Kong found that while only 5.2 per cent of respondents

thought journalists hesitated to criticise the Hong Kong government, 36.7 per cent thought that they hesitated to criticise large Hong Kong corporations, and 50.3 per cent thought they hesitated to criticise the Chinese government (So et al., 1996; Lee, 1998). Yet others pooh-poo any idea of self-censorship. In 2001 Arnold Zeitlin, then the Hong Kong representative of Freedom Forum, found that none was evident in the English-language and independent Chinese-language newspapers, which did not shy away from the main matters of the day in Hong Kong, the mainland and Taiwan (Zeitlin, 2001).

Conclusion

Cullen (2001) says that the rule of law needs an independent judiciary, a free press and a democratically elected government. All three seem somewhat fragile in Hong Kong. Anne Cheung (2002) criticises judges for not being independent enough and Yan finds that decisions on cases that involve the mainland are much less neutral than those that do not (Yan, 2001a), indicating that, while the judiciary remains professional, it takes a rather establishment stance. With Patten's sudden move towards democracy largely rolled back, the news media remain a very important factor in supporting rule of law and other freedoms. At present, they still conform to Lee and Chu's Type II, though they have moved on from the "reformist" model because, while they maintain their watchdog role over the government, they have become hostile to certain officials and the government has made some effort to suppress them, while the public have become rather disillusioned with the commercialism and sensationalism of the press (though they still buy the newspapers).

The lack of institutional safeguards such as a fully democratically elected legislature gives rise to concerns that press freedom could be limited at some point in the future. Hachten's "Western" concept of the news media requires: (1) a legal system that provides meaningful protection of civil liberties and property rights; (2) high levels of income, education and literacy; (3) the existence of legitimate political opposition; (4) enough capital to support the news media; and (5) an established tradition of independent journalism (Hachten, 1996: 18). Hong Kong can tick all five in current circumstances, but the analysis above shows that the first, third and fifth conditions may be under threat. Opposition voices remain but are being sidelined along with the legislature, and independent journalism is not a given in the current circumstances of media ownership.

The government has always stated its commitment to press freedom, but little has been done to confirm the rights of the news media. The HKJA & Article 19 (2002: 2) warns that, "The government is permitting an erosion of freedom of expression and associated rights by failing to take seriously their protection." Anne Cheung

(2000) finds that press freedom is "heavily dependent on executive restraint not to prosecute the press, and on liberal judges who are willing to reconcile the inconsistent provisions in favour of the press." The Tung administration seems to have no overall policies, officials appearing at times to be reacting to situations, often in ways that help their supporters. This has led the Tung government into a number of blunders, and the news media have been there to publicise every mistake. This allows for valuable feedback, though often of a negative hue.

Freedom of the news media in Hong Kong depends greatly on Beijing. As C.C. Lee (1998: 56) points out, "China is conscious that a measure of editorial independence in Hong Kong is acceptable, even necessary, as long as it does not offend China's central concerns or objectives." The Chinese government's attitude is a function of its modernisation policy, illustrated when President Jiang followed up his criticism of Hong Kong reporters by saying they compared poorly to Mike Wallace, an American journalist with the current affairs programme *60 Minutes* who had impressed Jiang during an interview. The news media on the mainland are far freer than they used to be, but they remain tightly controlled on political coverage. A change in Chinese policy on Hong Kong, possibly even prompted by Beijing's displeasure at the news media, would present an opportunity to use the restrictive laws left over from colonial days, as was done in the case of the ODN harassment of a judge, and make use of new laws, especially those addressing Article 23, to curb press freedom. ■

REFERENCES

- Bale, Cliff (2003). The battle over the bill, *The Journalist*, March, 3-4.
- Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (1990).
- Chan, Ying (1999). Hong Kong: Still a window between China and the West, *Media Studies Journal*, 13 (1), 84-89.
- Chen, Josephine (2001). Hong Kong: chief executive election in 2002, Summer internship paper, Hong Kong Baptist University. <http://www.civic-exchange.org/publications/Intern/ceelection.pdf>
- Cheung, Anne S.Y. (2002). One step forward two steps back: a study of press law in post-colonial Hong Kong, *Journalism & Communication Monographs*, 3, No. 4.
- Cheung, Jimmy (2002). I could have done better: finance chief Antony Leung regrets his remarks on penny-stocks controversy, *South China Morning Post*, 17 September, 1.
- Cheung, Jimmy; Leung, Ambrose & Li, Angela (2002). Go-ahead for Tung's reforms: lawmakers approve ministerial system after amendments from pro-democracy camp defeated, *South China*

- Morning Post*, 20 June, 1.
- Ching, Frank (1999). The post-1997 Hong Kong press: how free and for how long? *Asian Affairs: An American Review*, 26 (1), 3-10.
- Chu, Leonard L. & Lee, Paul S.N. (1995). Political communication in Hong Kong: transition, adaptation, and survival, *Asian Journal of Communication* 5 (2), 1-17.
- Clarke, Judith & Hamlett, Tim (1995). Freedom of expression in Hong Kong, *Free Speech Yearbook*, 33, 65-77.
- Fu, Hualing (2001). The national security factor: putting Article 23 of the Basic Law in perspective, in Tsang, Steve (ed.), *Judicial independence and the rule of law in Hong Kong*, Basingstoke: Palgrave, 73-98.
- Hachten, William A. (1996). *The world news prism: changing media of international communication*, Iowa State University Press.
- Hamlett, Tim (2001). Scandalising the scumbags: the Secretary for Justice vs. the Oriental Press Group, *AsiaPacific Media Educator*, 11, 20-33.
- Hamlett, Tim, & Clarke, Judith (1997). The law and Hong Kong news media after July 1997, *AsiaPacific Media Educator*, 2, 4-21.
- Hong Kong Bar Association (2002). Submissions on United Nations (Anti-Terrorism Measures) Bill, Hong Kong: Hong Kong Bar Association, July.
- Hong Kong Journalists Association (1999). Government must reject press council, Hong Kong: HKJA, August 22.
- Hong Kong Journalists Association (2001). Media freedom watch, Hong Kong: HKJA, February.
- Hong Kong Journalists Association & Article 19 (1997). The die is cast: freedom of expression in Hong Kong on the eve of the handover to China, Hong Kong: HKJA and Article 19.
- Hong Kong Journalists Association & Article 19 (1998). Questionable beginnings: Freedom of expression in Hong Kong one year after the handover to China, Hong Kong: HKJA and Article 19.
- Hong Kong Journalists Association & Article 19 (2000). Patriot games: Hong Kong's media face to face with the Taiwan factor, Hong Kong: HKJA and Article 19.
- Hong Kong Journalists Association & Article 19 (2001). Following the flag: China's sensitivities threaten freedom of expression in Hong Kong, Hong Kong: HKJA and Article 19.
- Hong Kong Journalists Association & Article 19 (2002). The line hardens: tougher stance on civil rights threatens freedom of expression in Hong Kong, Hong Kong: HKJA and Article 19.
- Hui Yuk-min & Kwok, Ben (2002). ATV chief to buy Lai Sun's 32pc stake, *South China Morning Post*, November 12, Business 1.
- Lee Chin-chuan (1998). Press self-censorship and political transition in Hong Kong, *Harvard International Journal of Press/Politics*, 3 (2), 55-73.
- Lee Chin-chuan (2000). The paradox of political economy: media structure, press freedom, and regime change in Hong Kong, in Chin-chuan Lee, (ed.), *Power, money and media: communication patterns and bureaucratic control in cultural China*, Evanston, Illinois: Northwestern University Press, 288-366.
- Lee Chin-chuan, & Chan, Joseph Man (1990). The Hong Kong press in China's orbit: thunder of Tiananmen, in Chin-chuan Lee (ed.), *Voices*

- of China: the interplay of politics and journalism, New York: The Guilford Press, 140-161.
- Lee, Paul S.N. & Chu, Leonard L. (1995). Hong Kong media system in transition: a socio-cultural analysis, *Asian Journal of Communication*, 5 (2), 90-107.
- Lee, Paul S.N. & Chu, Leonard L. (1998). Inherent dependence on power: the Hong Kong press in political transition, *Media, Culture and Society*, 20, 59-77.
- Leung, Ambrose & Li, Angela (2002). Loophole fears as terror bill is pushed through. *South China Morning Post*, July 13, 1.
- Lo Shiu-hing (1998). Mass media and politics in the Hong Kong Special Administrative Region, *East Asia: An International Quarterly*, Autumn/Winter, 16, 3/4, 111-137.
- Newman, David & Rabushka, Alvin (1998). Hong Kong under Chinese rule: the first year, Hoover Institution Essays in Public Policy. <http://www-hoover.stanford.edu/publications/EPP/default.html>
- Pan, Xiaping (2002). Consensus behind disputes: a critical discourse analysis of the media coverage of the right-of-abode issue in postcolonial Hong Kong. *Media, Culture and Society*, 24, 49-68.
- Quak, Hiang Whai (2000). Corporate raider takes HK by storm, *Business Times* (Singapore), November 28, 15.
- Reporters Sans Frontières (2002). October. http://www.rsf.fr/article.php3?id_article=4116
- Scollon, Ron (1997). The Hong Kong newspapers on the pre-transitional stage, *AsiaPacific Media Educator*, 2, 48-59.
- So, Clement; Chan, Joseph Man & Lee, Chin-chuan (1996). *Press freedom and political transition in Hong Kong: a summary of the Hong Kong journalist survey 1996*, Hong Kong: Chinese University of Hong Kong Research Projects and Publications.
- Yan, Mei-ning (2001a). One court, two rulings? Freedom of expression in post-1997 Hong Kong, *AsiaPacific Media Educator*, 11, 4-19.
- Yan Mei-ning (2001b). Revamping Hong Kong's broadcasting policy – issues addressed and issues outstanding, paper presented to the Sixth Asia Pacific Regional Conference of the International Telecommunications Society, July 5-7.
- Yeung, Chris (2002). Bulldozer tactics may backfire, *South China Morning Post*, July 13, 12.
- Yeung, Chris & Li, Angela (2000). University chiefs step down over Tung opinion poll saga, *South China Morning Post*, September 7, 1.
- Zeitlin, Arnold (1999). *Freedom Forum position paper: challenging the press council*. Hong Kong: Freedom Forum.
- Zeitlin, Arnold (2001). Press self-censorship a myth in Hong Kong, April 4. [http://www.freedomforum.org/templates](http://www.freedomforum.org/templates/document.asp?documentID=13802) document.asp?documentID=13802 (*Freedom Forum website*)

JUDITH CLARKE, formerly a journalist with Radio Television Hong Kong and Asiaweek, is an assistant professor in the Department of Journalism at Hong Kong Baptist University. Her main research interests are international news and the news media in East and Southeast Asia. Email: jclarke@hkbu.edu.hk
